# BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

## IN THIS ISSUE



**The Los Angeles Bar Association will honor Frank B. Belcher, President, and the Board of Governors of the State Bar at Dinner on August 4, 1943**

**Make your reservations now!**

6:30 P. M. University Club $2.25 per plate (including tax)

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# *BAR BULLETIN*

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## "THE BRINK OF CONSTITUTIONAL POWER"

In affirming the convictions of two citizens of the United States of Japanese ancestry for violating the "curfew" provisions of the proclamations of the Commanding General of the Western Defense Command, Fourth Army, the Supreme Court of the United States placed their decision squarely upon their interpretation of the war power. As the distinguished Chief Justice said in the opinion of the Court, "the war power of the national government is 'the power to wage war successfully.' . . . It extends to every matter and activity so related to war as substantially to affect its conduct and progress. . . . It embraces every phase of the national defense." Perforce, it includes the protection of our citizens from sabotage and espionage, even though the continent is not actually invaded. The Court held that it was the imminent danger of invasion which justified the measures taken by the Congress and the Executive to effect the removal from certain prescribed areas of all persons of Japanese ancestry. The adoption of such measures for the public safety, says the Chief Justice, "based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant."

Concurring in the judgment of affirmance, Mr. Justice Murphy says that sustaining this "substantial restriction on the personal liberties of citizens of the United States based upon the accident of race or ancestry" in his opinion "goes to the very brink of constitutional power." Perhaps it does, but does it matter if this is so, since the very need for this exercise of the war power is found in treacherous attack on the United States by Japan—an attack, no less, upon Government under the Constitution by which our powers are measured?

Certainly, if we do not go to the very brink of our constitutional powers, when necessary in defending this nation both at home and in the field, the Constitution, "intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs," will be of little value to any of us when the war is over. With equal certainty the exigencies of war require all of us as lawyers and as citizens to increase our support of the measures taken for our national defense and safety.

P. McC.

## ON THE FIGHTING FRONT

RECENT reports from Washington include the information that Edward S. Shattuck, at one time Assistant Secretary of the State Bar in Los Angeles, has been promoted to the rank of Colonel. His successor as Assistant Secretary, E. W. "Pop" Hendrick, now a Lieutenant Colonel on active duty in the South Pacific, writes Judge Bartlett that he was wounded in action last winter, received the Purple Heart and a recommendation for the Silver Star, and is now fully recovered and back on the line.

Baldo M. Krestovich, of the Public Defender's office, has received his commission as Ensign, U. S. N. and is stationed at San Pedro, while Hilton H. McCabe has been promoted and is now a Major. Alfred Connor Bowman has been promoted to the rank of Lieutenant Colonel, J.A.G.D., and is at the School of Military Government at Charlottesville, Virginia. Reid R. Briggs has been promoted to the rank of Lieutenant (j. g.) in the Navy.

Lieut. (j. g.) Robert W. Stevenson writes our Executive Secretary: "I have just returned from nearly a year's service afloat in foreign waters. It was indeed interesting to gain a glimpse of the legal activities in Los Angeles during the past several months afforded me through reading my accumulated copies of the BAR BULLETIN." Lieut. Stevenson, who served for a year as Ensign, is now at the United States Naval Armored Guard School, at Gulfport, Mississippi.

Since the publication of the BAR BULLETIN in May, we have added the following names to the Roll of Honor:

Gould, Carl M., Corporal, USA
Halsted, A. Stevens, Lt. (j. g.) USNR
Lindelof, George E., Jr., Pvt., USAAF
Martin, John Laurie, Ensign, USNR
Menzies, Thomas P., Captain, USA
Stein, Jay J., Pvt., USA

Steve Halsted and Jay Stein both served on the BULLETIN Committee a year ago, and more recently Steve was the Chief Rationing Attorney for the OPA in Los Angeles.

Last month Pvt. A. Stewart Maddox, Jr., and Pvt. Irving Karn were released from active duty by the Army.

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## DINNER WILL HONOR PRESIDENT FRANK BELCHER

FRANK B. BELCHER, President of the State Bar of California, will end his term of office in September, at the meeting to be held at San Francisco.

The Los Angeles Bar Association has arranged a dinner meeting of members for August 4, 1943, at the University Club, in honor of Mr. Belcher and other members of the Board of Governors who will be in Los Angeles to attend a meeting of the State Bar scheduled for that date.

Since there will be no regular convention of the State Bar this year, the meeting here on August 4 will afford the outgoing President an opportunity to review the work of the Board of Governors during his administration, and at the same time afford us the opportunity to do honor to a distinguished member of our local Bar.

Those desiring to attend are urged to make reservations for the dinner at once. It will be held at the University Club at 6:30 P. M.

## 1943 STATE BAR CONVENTION CANCELLED

THERE will be no regular State Bar Convention this year. The Board of Governors has announced that, in lieu of the Convention, a one-day meeting will be held in Los Angeles on August 4, and another in San Francisco on September 11. The meeting here will be held in the Assembly Room of the State Building, and the San Francisco meeting at the Palace Hotel. The Presidents of all local bar associations in the southern counties, including San Luis Obispo, Kern and San Bernardino will be asked to attend the meeting. All delegates of the southern counties who may be able to secure transportation are urged to attend the Los Angeles meeting. The election of officers and of the Executive Committee of the Conference of Delegates will be held by ballot sent through the mail. The delegates will receive further information regarding this matter.

The Los Angeles Bar Association Delegates, 25 in number, have held weekly meetings during the past month or six weeks to consider a number of proposals to amend various code sections, and to discuss several resolutions, submitted under the regular procedure, all of which would ordinarily come before the State Conference of Delegates. The delegation will complete its work and submit the results to the Board of Governors at the Los Angeles meeting.

The Delegates of the Los Angeles Bar Association, are as follows:

James B. Salem, *Chairman*
Helen Kemble, *Secretary*
Warren E. Libby, *Delegate at Large*
Ben S. Berry
Homer H. Bell
Perry Bertram
Ransom W. Chase
Mrs. Mae Carvell
Roy P. Dolley
Ranney C. Draper
A. L. Hickson
Elmer H. Howlett
Walter J. Little
Helena Mary Lucy
Leonard Lyon
L. R. Martineau, Jr.
A. I. McCormick
Clarke J. Milliron
Ewell D. Moore
Harold C. Morton
J. Stuart Neary
Austin H. Peck, Jr.
Thomas E. Ryan
W. C. Schaper
Howard F. Shepherd
Frederick Von Schrader
Rollin E. Woodbury

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## NEW APPELLATE RULES

**By Francis J. McEntee, of the Los Angeles Bar**

THE new rules of California appellate procedure which became effective July 1, were the subject of a forum conducted by the Los Angeles Bar Association at the Edison Building Auditorium on June 17, 1943, attended by 250 attorneys. The forum was sponsored by the Bar Association Round Table Committee of which Vice-President Harry J. McClean is the chairman.

Various changes made by the new rules were discussed by five members of the State Bar Committee which cooperated with the Judicial Council and other groups in drafting and revising the rules.

Norman Sterry, as Chairman of the State Bar Committee, gave a general explanation of the work of the committee in drafting the new rules. He

pointed out that major changes had been made and that attorneys must make adjustments for these changes in taking appeals in the future.

Jackson W. Chance explained the new points involved in filing an appeal, including the manner and time in which an appeal may be taken, and the effect of a motion for a new trial. He also answered questions on the hearing and determination of the appeal.

Paul Nourse discussed the record on appeal. He emphasized the new "designation system" for taking up a partial transcript.

Stanley M. Reinhaus described the rules relating to briefs. He noted that *amicus curiae* briefs cannot be filed except with permission of the Chief Justice or Presiding Justice.

Paul Vallee covered the topic of appeals in criminal cases. He stated that under the new method, the appeal may only be taken after written notice instead of the oral notice formerly allowed; and that a transcript of the oral proceedings must now be prepared.

It is anticipated that as the rules are tested by actual operations, some further changes may be required in the Judicial Council. Amendments will probably be developed with the aid of the Bar Association Committees who have worked on these original rules. All suggested changes of rules of procedure may be sent to the Executive Secretary of the State Bar who will refer them to the Board of Governors or the proper committee for consideration.

## COMMENT AND CRITICISM

**Bureaucracy and Courts**: Some courts, not in this locality, are incensed at OPA for imposing what they call "second punishment" upon traffic violators. For instance: A court hears a traffic case and fixes the punishment, if any. Along comes OPA, so it is said,—and through local rationing boards, inquiries into speeding and other traffic violations, already heard and determined by the Court, and perhaps suspending or cancelling ration books. This sort of thing implies that the Court was not competent to determine the case, was too lenient, or lacked the intestinal fortitude to visit proper penalties, in the opinion of OPA. It goes beyond that; it is a most striking and questionable use of bureaucratic power; a substitution, in effect, of a Governmental Agency's rules for court decisions.

*Such procedure* impairs the confidence of the people in courts—a long step towards the destruction of democracy. Of course, there are many persons who would do away with the lawyer, as such, and settle all controversies by boards or bureaus. But this growing tendency seems to have been ignored by the Bar generally, although vast printed space has been used to warn the profession of its dangers.

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**A Matter of Intestinal Fortitude!** Judges in California, according to the Constitution, cannot draw or receive their monthly salary unless all pending causes submitted for decision for a period of ninety days have been determined. In the absence of such a provision, the Supreme Court of Pennsylvania recently found it necessary to issue a peremptory writ of mandamus to compel a county judge to clean up his docket within sixty days. Some of the cases involved had been pending since 1940. "Failure to comply with this peremptory mandamus," said the court, "will subject the defendant to an attachment directed against him and issuing out of this court for disregard of its authority."

# RECENT DEVELOPMENTS IN PROBATE LAW

Elmo H. Conley, of the Los Angeles Bar

WHEN the State Legislature adds three important amendments to the Probate Code in a single year—as in the session recently ended—it seems that even this old and venerable branch of the law finally is beginning to progress. The 1943 Legislature has passed and the Governor has signed three bills of major importance which will become effective August 4, 1943: the *first* adopting the so-called "Prudent Investment Rule" for California Trustees; the *second* providing for the equitable proration of the Federal estate tax among all persons interested in the taxable estate; and the *third* permitting an affidavit or verified petition to be used as evidence in *any* uncontested probate proceedings.

The rules laid down by these three new statutes are so logical and necessary that many lawyers at once are disposed to ask: "Why should such legislation become necessary? Why couldn't the courts have arrived at the same results without the aid of the Legislature?" The answer, of course, is the usual combination of outworn precedents and the refusal of the courts to adapt the law to changed conditions.

## I. THE TRUST INVESTMENT RULE

While it is entirely possible that the Prudent Investment Rule has always been the standard for trust investment in California, at least for individual trustees without the inhibitions of the Bank Act, nevertheless, a lawyer has always been disconcerted when his trustee-client has asked him what kind of investments he could make. He could point to no code section as a yardstick, nor had the Supreme Court reached any definite decision as to whether the New York or the Massachusetts rule applied.

Statutes of 1943, Chapter 811, amends Section 2261 of the Civil Code to provide a set of standards for trust investment. By its terms, it applies to all trusts now existing or hereafter created. It provides that "a trustee shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital." He is not, however, released thereby from any express provisions or limitations contained in the trust instrument itself unless relieved therefrom in proper cases by an appropriate court.

## II. THE ESTATE TAX RULE

Until the case of *Wells Fargo Bank v. Older,* 50 C. A. (2d) 724, 123 P. (2d) 873, was decided in 1941, few lawyers would have thought that a decedent's probate estate must be exhausted in paying the Federal estate tax before his *inter vivos* trusts could be touched (in the absence of some expressed intent to the contrary). A typical situation arises where a wealthy man has transferred $500,000.00 to trustees during his lifetime, retaining only $100,000.00 to pass under his will. He may bequeath this $100,000.00 to the nearest and dearest members of his family—yet under the reasoning of the *Wells Fargo* case, they would receive nothing if he had failed to provide in the trust for the payment of his estate tax and the trust proves to be taxable.

Although the *Wells Fargo* case is based upon a misconception of the purpose

of Congress in levying the Federal estate tax* and might be overruled by the Supreme Court of California in a proper case, the Legislature has adopted a more direct method of approach to correct this intolerable situation. Statutes of 1943, Chapter 894, includes in our California statutes as new Probate Code sections 970-977 the provision heretofore contained in the laws of New York and other states to the effect that Federal estate taxes, except where otherwise directed in the will or written trust instrument, shall be equitably prorated among the persons interested in the estate. Although the executor or administrator must pay the tax in the first instance, it gives him the right and makes it his duty to collect the portion of the tax due from persons other than those interested in the probate estate as such. The new sections by their terms, include all persons who receive any property pursuant to a transfer which is subject to a tax imposed by any Federal estate tax law now or hereafter enacted. Chapter 894 expressly limits the effect of the new code sections 970-977 to the estates of persons dying after its effective date.

### III. THE AFFIDAVIT AS EVIDENCE RULE

Perhaps the best way to save the time of the Probate Court (as well as counsel) is to reduce as much testimony as possible to writing and then to file the sworn testimony in the probate proceeding. Where such testimony is available in advance of the hearing date and can be checked carefully by competent assistants, the calling of uncontested matters becomes a matter of mere routine. The Probate Court of Los Angeles County has followed this practice for many years to the extent it was deemed possible under existing code sections. The Legislature has now sanctioned this procedure and broadened its scope by adding the following new paragraph to Probate Code Section 1233 (1943 Statutes, Chapter 821):

> "An affidavit or verified petition must be received as evidence when offered in any uncontested probate proceedings, including proceedings relating to the administration of estates of decedents and proceedings relating to the administration of estates of minors or incompetent persons after a guardian has been appointed therein and in uncontested proceedings to establish a record of birth."

It will be interesting to observe how far the Probate Courts of Los Angeles and other counties will go in giving effect to this amendment. If accepted at

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*In *Wells Fargo Bank v. Older,* the District Court of Appeal in denying apportionment of estate tax, based its opinion upon the following construction of the intent of Congress:

> "If the decedent had desired that the tax should have been paid, in whole or in part, by the trustees, he could have expressed that desire in the deed of trust or in his will. He did neither. The same remark applies to the matter of apportioning the tax; and, in that particular, if the congress had so intended it would have so provided. It made an exception as to certain insurance (Sec. 826, subd. (c)); but there it stopped. It will be presumed the congress intended no other exception. (*Bemis v. Converse,* 246 Mass. 131 (140 N. E. 686).) For the courts to designate a different procedure is to usurp the powers of the congress or to make additions to the will or deed of trust executed by the decedent."

But since the decision in the *Wells Fargo* case, the Supreme Court of the United States, in *Riggs v. Del Drago,* 87 L. Ed. (Adv. Ops.) 69 (decided Nov. 9, 1942), holding "that Congress intended that state law should determine the ultimate thrust of the tax."

In a footnote to the *Riggs* case, the Supreme Court points out that the Massachusetts court in *Bemis v. Converse, supra,* did not so understand. This is also true of other earlier cases in the state courts which denied apportionment on the grounds that the Federal Estate Tax Act did not specifically so provide.

More recent cases have apportioned the tax upon an equitable basis even in the absence of expressed intent or a state statute. *Gaede v. Carroll,* 114 N. J. Eq. 524, 169 A. 172; *Henderson v. Usher,* 125 Fla. 709, 170 So. 846.

its face value, the taking of oral testimony will no longer be necessary except in the case of contests. The tiresome procession to the witness box of witnesses to wills, petitioning executors and administrators, accounting trustees, etc., may be entirely eliminated in 95% of the cases, and the Probate Judge will merely announce that "unless some objection is raised, the following wills are admitted to probate, etc." This procedure has been followed for many years in certain states.

**IV. MINOR CHANGES**

So far, we have considered only the major amendments to the Probate Code. There are also a dozen or more minor changes such as the following: (Chapter references are to Statutes of 1943.)

Chapter 523 adds a new Section 4 to the Probate Code to read as follows:

> "4. Division, part, chapter, article, and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provision of any division, part, chapter, article or section hereof."

Chapter 305 amends Section 41 of the Probate Code which contains the restriction upon charitable gifts to add the following provision:

> "Nothing herein contained is intended to or shall be deemed or construed to vest any property devised or bequeathed to charity or in trust for a charitable use to any person who is not a relative of the testator belonging to one of the classes mentioned herein or in any such relative unless, and then only to the extent that such relative takes the same under a substitutional or residual bequest or devise in the will or under the laws of succession because of the absence of other effective disposition in the will."

Whenever the Legislature can find nothing better to do, it can always be counted upon to add some new angle to the Charitable Gifts section. Five years later we learn what the new amendment means—and by that time, it usually has been repealed. It would seem that under the above new language, the entire effect of *all* the limitations contained in Section 41 may now be avoided by merely making a residual bequest to a total stranger. Or does it mean this? Read it three times and see if you understand it yourself!

Probate Code Section 255 is amended by Chapter 998 to permit an illegitimate child to represent his mother and inherit any part of the estate of the mother's kindred either lineal or collateral.

Chapter 941 adds the word "grandchild" to Probate Code Sections 423, 450 and 452 which specify priorities in connection with the appointment of an administrator.

Chapter 811 amends Section 584 of the Probate Code to permit the executor or administrator to purchase from an insurer admitted to do business in this state and for any legatee named in the will an annuity expressly granted to him by said will.

Chapter 334 adds a new section 754.5 to the Probate Code to permit the sale as a unit of real estate and personal property used thereon under one bid for not less than 90% of the aggregate appraised value.

Chapter 333 adds the following provision to Section 756.5 of the Probate Code which provides that upon hearing of petition for confirmation or approval of sale of personal property, the court may accept offers of 10% in excess of the amount named in the return:

> "This section shall not apply to personal property sold at public auction nor to personal property sold under the provisions of Section 770 of this Code."

This amendment relieves an executor or administrator from the possible danger of having the court accept a higher bid for property which he has theretofore delivered to the purchaser and which some other person attempts to purchase for a higher price at the time of the hearing of the petition for confirmation.

Chapter 174 provides that no bond need be required on the sale of a contract to purchase where the person entitled to payments under such contract waives all recourse to the assets of the estate and releases the executor and administrator from liability therefor.

Chapter 473 amending Section 1461 of the Probate Code provides additional safeguards in connection with the appointment of guardians for insane or incompetent persons. The petition now must set forth the names and residences, so far as they are known to petitioner, of the relatives of the alleged insane or incompetent person within the second degree residing in the state, and notice of the proceedings must be mailed at least five days before the hearing date to each of such relatives. While this may complicate somewhat the proceedings for the appointment of such guardians, neverless it gives to all interested parties an opportunity to oppose the petition.

Probate Code Section 1530 has been amended to permit a guardian to sell any of the real or personal property or to mortgage or give a deed of trust upon any of the real property if the personal estate and income from the real estate is insufficient to pay his debts or *if it is for the advantage, benefit or best interests of the estate* or ward or such members of his family as he is legally bound to support and maintain. However, for some unexplained reason, the right of a guardian to exchange property, formerly contained in Section 1530, has been taken away.

Section 1531 which required that the order confirming sale must specify the particular disposition to be made of the proceeds has been repealed. Certainly this is an improvement, for often it is wise for a guardian to sell promptly before he is ready to reinvest.

Sections 1516, 1535, 1550, 1554 and 1558 have been amended (Chapter 1053) to provide for a fifteen- (instead of five) day notice to the Director of Institutions where the ward is confined in a state hospital for the insane. The Attorney General is eliminated as an alternate upon whom service of the notice may be made.

Chapter 733 amends Section 1663 of the Probate Code regarding commitment of a war veteran to a United States Veterans' Hospital to provide for the commitment to the Veterans' Administration or other agency of the United States Government. Nevertheless, the probate court retains jurisdiction to determine the necessity for continuance of his restraint.

As usual, the attempt which has been made at each recent session of the Legislature to broaden the provisions of Section 423 of the Probate Code to permit the nomination of an administrator by "any heir at law or next of kin entitled to share in the estate" has failed. Under Section 423 as it now exists, only a *"person entitled"* can nominate, which means that nomination by a *non-resident* heir at law or next of kin is insufficient. This time, it was passed by the Assembly but was successfully buried by the Senate Committee on Judiciary. In view of the fact that the proposed amendment to this section has received the approval of the State Bar and various local bar associations, it is apparent that strong influences are exerted upon the Legislature each session to prevent the passage of this beneficial legislation. Perhaps if the endorsement of the State Association of Public Administrators could be secured, it might be enacted.

Considerable publicity was given to new legislation in regard to the age at which females shall attain the age of majority. This has now become Chapter 154, Statutes of 1943. An examination of this new amendment to Section 25 of the Civil Code discloses, however, that it is quite limited in its effect and merely provides that an 18-year-old female *who is lawfully married* shall be deemed an adult person for the purpose of entering into transactions respecting property or her estate or entering into a contract. It does not change the law with respect to unmarried women, who still attain majority at the age of 21 years.

**V. LATE DECISIONS**

No discussion of recent developments in Probate Law is complete without a survey of late decisions of the Supreme Court. The unimportance (from the standpoint of general practice) of most cases is astonishing. Out of some hundred opinions reviewed, only two or three require special notice.

In *Estate of Platt,* 21 A. C. 356, 131 P. (2d) 825, the Supreme Court again writes the "last word" with regard to the date when income commences upon bequests to trustees. This time the Court discards all previous yardsticks (such as "trusts for maintenance," etc.) and rules that the income shall commence at *death* in all cases. All earlier decisions to the contrary are specifically overruled. The Court bases its decision upon Probate Code Section 160 providing that "In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death." Perhaps a trust consisting of stocks, bonds, and cash, as in the *Platt* case, may be called a "fund," but suppose it had been real estate? Certainly a gift of real estate is not a "bequest," but rather a "devise," nor is it very convincing to classify it as a "fund". Perhaps the result obtained in the *Platt* case is commendable, but the reasoning seems somewhat strained.

But the Court, not content with overruling its earlier decisions as to date of income, goes one step further and allows the widow *interest* on the income from the date collected by the executor and the date of distribution. Thus, although the executor cannot pay her the income during probate, he must pay interest upon it, presumably at the legal rate! This is based on Probate Code Section 162 providing that legacies to the testator's widow bear interest from the date of testator's death. Again, suppose the gift in trust is real estate: is it a legacy? Can the executor deduct property taxes from the income, or does the widow receive the gross collections? The fact that the widow received a widow's allowance is immaterial—she still receives the income in full from the date of death. Perhaps this apparent duplication of payments may be avoided in the future if the Probate Court, in determining the amount of the widow's allowance, will take into consideration the widow's income from this other source. Certainly the testator in his will can prevent such duplication.

Another question arises in cases where the decree of distribution, which has become final, does not provide for either income or interest thereon. Can the widow collect these payments from the trustee, particularly where the decree distributed all of the estate to the trustee without distinguishing between corpus and income? It would seem that *Estate of McLellan,* 8 C. (2d) 49, 63, P. (2d) 1120, answers this question in the negative—but the latter case was decided before the opinion in the *Platt* case.

The case of *Miller v. Jansen,* 21 A. C. 507, 132 P. (2d) 801, deals with the question of deeds found in safety deposit boxes after death. Decedent executed a deed purporting to convey her home to her sister for life with remainder to defendant. It purported to have been "Signed, Sealed and Delivered in the presence of" a third person. At her death, it was found in her safety deposit box, together with a letter to defendant in which decedent stated:

"I have tried to fix things so there would be no expense. I hope it works." It didn't! Defendant relied on Civil Code Sec. 1055 which reads: "A grant duly executed is presumed to have been delivered at its date." The Court held that actual delivery is necessary. Thus, a scheme for avoiding probate expenses and inheritance taxes which has occurred to more than one property owner has failed of its purpose.

Since regular sessions of the Legislature occur only biannually, the industrious probate lawyer, having mastered a dozen or more changes in the Probate Code, usually feels that he can then hibernate safely for two years. Just a word of warning, however: during a war period, Congress is in almost continuous session and must raise larger sums through taxes. This means frequent changes in tax laws. Last year, the community property states were shifted from a highly preferred position with respect to Federal estate tax to the very foot of the list. All presumptions are now *against* the owner of community property from an estate tax standpoint. With probable increases in all Federal taxes just ahead, it seems doubtful that the present estate tax rates can be retained. The probate lawyer should be in great demand during the next few years to help meet the impact of these changes.

## WITH THE BOARD OF TRUSTEES

**Bar Post-War Planning.** Many of the some 300 members of the Los Angeles Bar Association now serving in the armed forces—and many others who may enter the service from day to day—will return home when hostilities cease, and be obliged again to start from scratch in their profession. This is recognized as a problem to be given immediate consideration, and that the time to formulate a plan to assist those who have made real financial sacrifices, and to meet the economic hazards of the future, is now.

The Board of Trustees of the Association has authorized, and President Mathes has therefore appointed a special Committee on Post-War Planning, and directed it to "study problems which it is anticipated will confront lawyers returning from war service, to devise plans whereby to meet such problems, and to report periodically its recommendations to the Board of Trustees."

This is a long-time program and its importance is evidenced by the personnel of the Committee membership selected to carry it forward. The Committee is comprised of the following: Raymond Haight, *Chairman;* B. J. Bradner, *Board Member;* C. Newell Carns, Hon. Ray L. Chesebro, *City Attorney;* Hon. Joseph W. Vickers, *Judge Superior Court;* Maynard Garrison, John O'Melveny, Robert S. Stevens and Richard A. Turner.

**Coordination of Bar Associations.** The stress of war, with its attendant distractions and difficulties of transportation, has lessened the opportunities of bar association members to meet and discuss public and professional problems. In order that this unavoidable situation may be mitigated to some extent, President Mathes of the Los Angeles Bar Association has appointed a special Committee on Coordination with Affiliated Associations of the county, and assigned to it the duties of conferring with the officers of the Affiliated Associations, to follow the activities of such associations more closely and to coordinate their activities with those of the larger association. It is anticipated this plan will bring about better cooperation in connection with the many present problems and those that will inevitably arise at the conclusion of the war.

The members of the Committee are: Loyd Wright, *Chairman,* Los Angeles; Joe Crider, Jr., Los Angeles; Moe M. Fogel, Santa Monica; Vernon Spencer, Inglewood, and Harry J. McClean, *Board Member,* Los Angeles.

## NEW MEMBERS AND REINSTATEMENTS

AS we noted in the BULLETIN last month, President Mathes recently appointed a Past President's Committee to assist in preventing unnecessary lapses of memberships, and to encourage former members to again become active and give their support to the Association. We print below the names of the new members and those who have been reinstated since the latest similar list was published in March, 1942. Let's hope that the next list is twice as long.

Fred Aberle
Hon. Ida May Adams
Paul Angelillo
Burnham Asch
Louis A. Babior
Earle K. Backus
Ralph F. Bagley
Robert B. Ballantyne
Frank J. Barry
Walter E. Barry
William W. Bearman
Hon. F. Ray Bennett
Vernon Bettin
Hon. Samuel R. Blake
Rush M. Blodget
Edmund M. Bluth
Edwin C. Boehler
Brinton N. Bowles
William H. Brayton
Bernard Brennan
Joseph Brenner
Ella Rae Briggs
James William Briscoe
William M. Byrne
Herbert Cameron
Richard H. Cantillon
Walter T. Casey
Reginald E. Caughey
Floyd B. Cerini
R. M. Chenoweth
Walter E. Clark
Henry H. Clock
Lawrence Cobb
Thomas Connell
William J. Conners
John G. Cope
John J. Craig
Winthrop M. Crane
Joseph J. Cummins
J. Wesley Cupp
J. Harold Decker
Leon W. Delbridge
Gerald Desmond
Leonard A. Diether
Frederick N. Edwards
Louis J. Euler
McIntyre Faries
Philip C. Farman
W. M. Farrer
Henry Fischer
Edwin Forrest Franke
Verle N. Fry
Lewis T. Gardiner
Leroy A. Garrett
H. A. Gebhardt
Jonathan C. Gibson
John A. Gilligan
Alfred Gitelson
Hyman Gold
Rex B. Goodcell
Carl M. Gould
Alfred A. Grant
Alfred Grossman
Arthur S. Guerin
Marshall Gumbiner
Frank Randall Guyon
Gilbert E. Harris
William Ballentine Henley
Roy L. Herndon
Bernard Hiemenz
E. E. Hitchcock
Elmer Hoffman
Gaines Hon
Hon. Fred N. Howser
Wendell P. Hubbard
James F. Hudson
Hal Hughes
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Julian Isen
Anson B. Jackson, Jr.
Norf James Jebbia
Deane Frank Johnson
Hon. Kurtz Kauffman
Hiram T. Kellogg
Victor H. Kendrick
Arthur W. Kennedy
Don M. Kitzmiller
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Robert E. Kopp
Hon. Harold B. Landreth
I. Richard Leemon
L. A. Lewis
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Robert J. Schmorleitz
Hon. Robert H. Scott
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Edmond Francis Shanahan
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Meyer M. Willner
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William E. Woodard
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J. Howard Ziemann

## THE WAR CHEST NEEDS YOUR HELP

BYRON HANNA

THE local legal profession was honored recently by the appointment of one of its well known members, Byron Hanna, as chairman of the speakers' bureau of the Los Angeles Area War Chest, which will conduct a fund-raising appeal this fall in behalf of war related and charitable causes serving the military, United Nations and home fronts. Mr. Hanna has already taken over his new duties, and has announced that he expects to recruit at least 1000 well qualified speakers to "bring home the message of the War Chest to every fireside in the community."

Speakers will be booked for engagements before all major clubs and organizations in this area. Those who are willing to enlist as volunteer speakers for the appeal are urged to write to War Chest headquarters, 204 West Seventh street.

The War Chest was organized some time ago by civic leaders for the purpose of eliminating various conflicting fund-raising appeals for war and welfare causes by uniting those appeals into one. P. G. Winnett, president of Bullock's, Inc., is campaign chairman. Not only are expenses reduced through the consolidation of overhead, Mr. Hanna explains, but volunteer manpower and womanpower, needed to raise the funds, are also conserved, leaving more time for other war activities after the War Chest fund is raised.

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## THE FABLE OF THE PERFECT ALIBI AND THE CORROBORATING WITNESS

**By Richard C. Heaton, of the Los Angeles Bar**

ONCE UPON A TIME it became necessary for a Lovely Young Thing, on trial for her life, to establish a Perfect Alibi. Her Counsel, by Patient and Searching Interrogation during numerous conferences prior to the trial, had learned that she did Indeed have a Perfect Alibi, to wit: At the Very Time of the alleged Crime she was confined in Maternity Hospital, with Every Reason in the World for being there.

The Physician who had attended her *accouchement* was prepared to Corroborate her story.

The Transcript of the Testimony of the Defendant and the Corroborating Witnesses, as it developed at the Trial, went somethink like this:

MRS. GRACE COMELY

called to the stand by and on behalf of Defendant, having been duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Job:

Q. Will you please state your full name?

A. Why Mr. Job, that is just silly; you know my full name.

Q. Yes; but please state your full name to the jury.

A. Why, that's silly, too. That man there (indicating the Clerk) just said it loud enough so everyone in the room could hear it.

Q. I know; but please state your name for the record.

A. Why, it's on all the papers there.

Q. Mrs. Comely, will you please state your full name?

A. Well, all right, but I still think it's silly. It's Mrs. Grace Comely.

Q. Thank you. Where do you live?

The Court: Is is necessary to go into that?

Mr. Job: Perhaps not, Your Honor. May I withdraw the question?

The Court: You certainly may.

Q. Now, Mrs. Comely, will you please tell this Court and Jury where you were on the night of Januuary 26th?

The Witness: That was Tuesday, wasn't it?

Q. You mustn't ask me questions. I just asked where you were on the night of January 26th.

A. Well, I am sure it must have been Tuesday, because we didn't have any meat for dinner the night that I went to the hospital.

Q. Never mind about that, please. Just tell us where you were on the night of January 26th.

A. Why, that is the night my baby was born.

District Attorney: I move that answer be stricken as not responsive. I object to this witness bringing in her baby.

The Witness: I didn't bring him in. Mr. Job wouldn't let me. What's the matter with all you men; don't you like babies?

The Court: Order please.

Q. All I asked, Mrs. Comely, was, "Where were you on the night of January 26th?"

A. I was telling you that's the night my baby was born.

The Court: Please, Madam, where were you?

The Witness: Why, at the hospital, of course.

Q. What hospital?

A. My, the nurses were so nice.

Q. Can you tell us the name of the hospital?

A. The food was awfully good, too.

Q. The name, Mrs. Comely, the name of the hospital.

A. I don't remember the name of it.

Q. Do you remember where it is located?

A. Why yes, it's right here in town.

Q. Do you know the address?

A. No, but it is out that way (pointing).

Mr. Job: May it be stipulated by counsel that the witness is referring to the Maternity Hospital?

The District Attorney: So stipulated.

Mr. Job: That is all, Mrs. Comely. You may cross-examine.

* * *

DR. XENOPHON STORK

called to the stand by and on behalf of Defendant, having been duly sworn, was examined and testified as follows:

*Direct Examination*

By Mr. Job:

Q. Will you please state your full name, Doctor.

A. Dr. Xenophon Stork.

Q. Do you know Mrs. Grace Comely, the defendant in this action?

A. I do.

Q. Do you know where she was on the night of January 26th?
A. I do.
Q. Where was she?
A. Room 207, Maternity Hospital, 1100 Rambling Road, Los Angeles, California.
Q. Did you see her there?
A. I did.
Q. That will be all. Thank you Doctor.

Moral: "It will need more than the 19th Amendment to convince me that there are no differences between men and women . . ."

—Mr. Justice Holmes, dissenting,
in *Adkins v. Childrens' Hospital*,
261 U. S. 525, 569-70;
67 L. Ed. 785, 801 (1922).

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## RATIONING AND SALES OF GOING BUSINESSES*

IN handling escrows involving the sale of going businesses, attorneys undoubtedly are called upon to handle transfers of establishments which deal in rationed foods (sugar, coffee, processed foods, meats, fats, and oils). Failure to comply with the requirements of the Rationing Regulations issued by the Office of Price Administration affecting the transfers of such establishments may prevent the continued operation of the establishments. In order to avoid this hardship certain things must be done under the Rationing Regulations.

The specific procedure to be followed in the various types of transfers differs because the applicable law differs with respect to the particular establishment, whether it be a restaurant, a grocery store, a wholesaler, etc. However, there are certain requirements that must be met in any transfer of a business which deals in rationed foods. Briefly, these general requirements are as follows:

(1) Both the transferor and the transferee must, within *five* days after the transfer, notify the War Price and Rationing Board at which the establishment is registered, or the District Office or the Washington Office, if it is registered there. This notice is required in order that the registration of the transferor may be cancelled and the registration by the transferee effected. The notice must state the name and business address of the establishment and the persons transferring and acquiring it; the point value of the inventory transferred; the balances, if any, in the establishment's ration bank accounts and the amount of any stamps, certificates or ration checks on hand.

(2) If the transferor maintains a ration bank account or accounts, he must notify the District Office so that the bank may be instructed to close his ration bank accounts. In no case does the transferee use the transferor's ration bank account, but the transferee may open a new bank account for the establishment if it is eligible to have a ration bank account.

In cases of transfers of establishments it is recommended that the transferor and the transferee call upon their local War Price and Rationing Board. or the appropriate District Office, in order that the proper procedure may be followed.

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*This information is published at the suggestion of A. Stevens Halsted, Jr., of the Los Angeles Bar, recently Chief Rationing Attorney of the Los Angeles District Office, O. P. A.

# THE CALIFORNIA YOUTH AUTHORITY

**By Karl Holton, of Los Angeles***

SINCE the Youth Correction Authority Act was passed in 1941 it has been studied by three legislative interim committees.

Senate Interim Committee on Penal and Correctional Institutions (consisting of Senators Charles H. Deuel, Frank L. Gordon, John H. Swan, Oliver J. Carter, Peter P. Myhand), stated in its report dated March 16, 1943, "The State when it established the Youth Correction Authority made a great forward step in that phase of criminal control and prevention which deals with youth, that perpetual reservoir from which 90 per cent of criminals are recruited. It feels, also, that the powers given the Youth Authority should lead not only to prevention, but will prove a great factor in restoring to useful lives those capable of being rehabilitated. It is true that the Authority is still in the stage of experimentation and that it will require the passage of years to demonstrate its true worth, but the committee feels, nevertheless, that the objects sought are soundly based and offer for the first time in the State's history something tangible as against the long-cherished idea that little can be done about those who transgress the laws except to confine them behind bars and brand them with the marks of disgrace which endure throughout their lives."

The Assembly Interim Committee investigating camps for juvenile delinquents, and consisting of Assemblymen Edward F. O'Day (Chairman), Edward N. Gaffney, Charles M. Weber, Lorne D. Middough, and Augustus F. Hawkins, recommended that the Youth Authority be provided with funds to enable it to establish forestry camps to which delinquent boys could be committed.

Assembly Resolution No. 117 adopted by the 55th session of the legislature provided for an interim committee of seven members of the Assembly to be termed "The Assembly Fact-Finding Committee on Correctional Problems." This committee was charged with the responsibility of considering, evaluating and appraising the Youth Correction Authority Act in order to determine whether it should be continued in effect without change, or be amended or repealed.

*Mr. Holton is a member of the Youth Authority. He is also Probation Officer of Los Angeles County, being on leave of absence until November, 1943, to serve full time with the Authority.

If the Youth Correction Authority was to be continued, the committee was also given the responsibility of determining how it should be organized, how much budget was to be allowed, the types of projects for which sums appropriated should be used, etc. As members, the following assemblymen were appointed: Franklin J. Potter, Chairman; Gardiner Johnson, Edward F. O'Day, T. Fenton Knight, Lorne D. Middough, Michael J. Burns, Randal F. Dickey. This interim committee thoroughly studied the Youth Correction Authority Act. It also checked the work done by the Youth Correction Authority since it was organized. It had the benefit of reports and recommendations from the Juvenile Court Judges Committee appointed by the State Bar, and from the special judges committee appointed by the California Conference of Judges to study the Youth Authority. This last committee, consisting of Judges Robert H. Scott (Chairman), W. Turney Fox, and Clement D. Nye, urged the continuance of the Youth Correction Authority and directed attention to the need for additional facilities for the care of juvenile delinquents. The interim committee also had the advice and counsel of individual judges throughout the state, probation officials, teachers' organizations, service clubs, women's organizations, and other citizens interested in this field.

## YOUTH AUTHORITY ACT AMENDED

As a result of the interim committee recommendations the Youth Correction Authority was continued, but the law was amended in the following important particulars:

1. Section 1731.5 of the Welfare and Institutions Code was amended to postpone the date upon which commitments by the courts to the Youth Correction Authority became mandatory, from January 1, 1944, to January 1, 1946.

2. The word "Correction" was eliminated from the title so that the Youth Correction Authority will be known hereafter as the Youth Authority.

3. There was appropriated to the Youth Authority the sum of $1,000,000 for the 95th and 96th fiscal years.

4. The Preston School of Industry, the Ventura School for Girls, and the Fred C. Nelles School for Boys (Whittier) were transferred from the Department of Institutions to the Youth Authority. The juvenile courts will use the same procedures as formerly, but will commit to the Youth Authority instead of to the Department of Institutions, for placement of boys and girls in one of these three schools.

5. The Division of Probation was transferred from the State Department of Social Welfare to the Youth Authority. No change was made in the powers of the Division of Probation or in its relationship to courts or probation departments.

6. The Youth Authority Board was re-organized so that the Authority will choose one of its members to act as Director and to exercise all of the powers of the authority except the powers of diagnosis, classification, placement and parole. The three-man Board is retained and to the Board is reserved the exclusive right of diagnosis, classification, placement and parole. The two part-time members are entitled to a $25 per diem fee for attendance at Board meetings, provided they are not already in the employ of any governmental agency. (Assemblymen O'Day and Middough were in disagreement with this change. Both felt that a three-man full-time Board should be retained. The other members of the committee felt that one Board member was sufficient during the organization and while the mandatory provisions for commitments by the courts to the Authority was suspended.)

7. An urgency appropriation of $20,000 was made to the Youth Authority so that it could begin its camp program at once.

8. The President of the California Teachers' Association was named as a sixth member to sit on the Advisory Panel which is to recommend members for appointment to the Authority.

9. The Authority was given the power to request the Governor for extradition.

10. The Authority was given the power to have peace officers arrest persons who escape from its jurisdiction.

11. The Authority may collect statistics and information regarding juvenile delinquency from state, county and city officials and departments.

12. Section 1737.5 has added to the Welfare and Institutions Code the provision that "A commitment to the Authority is a judgment within the meaning of Chapter I of title 8 of part 2 of the Penal Code, and is appealable." (This is to remedy the defect in the law which was pointed out by the District Court of Appeal in their opinion holding that a commitment to the Youth Authority was not a judgment. *In re Herrera,* 58 A. C. A. 525, Apr. 30, '43.)

13. The Authority is empowered to enter into contracts with colleges and other organizations for the purpose of research in the field of delinquency and crime prevention and for the training of workers in this general field.

In addition to these change in the law the interim committees studying the Youth Correction Authority strongly urged the establishment of facilities for the care of younger boys, the immediate establishment of forestry camps for older boys, and the establishment of specialized facilities for the care of girls.

The Youth Authority was also urged to take an active part in a statewide program of delinquency prevention.

Since the adjournment of the legislature, the Youth Authority has been completely reorganized, and under the leadership of the member who is to be the full-time Director, and its chief Administrative Officer, the Authority is establishing four major divisions:

**(a) DIVISION OF DELINQUENCY PREVENTION**

Governor Warren is extremely anxious to see everything possible done to aid communities in preventing delinquency. Detailed plans are being worked out under his direction to use the facilities of the State War Council and of the Youth Authority to plan and organize a really worth while statewide program.

**(b) DIVISION OF DIAGNOSIS AND CLASSIFICATION**

This division has already been established and is being expanded. It will make studies of all boys and girls committed to the Authority and recommend the type of treatment needed. All persons committed will be re-studied periodically by the clinic staff. The clinic will also give service to the three correctional schools and to the communities which lack this type of facility.

**(c) DIVISION OF TRAINING AND TREATMENT**

This division is already organized. Under it will be the three correctional schools, camps, girls' school, and all other training units which the Authority now operates and will later establish.

**(d) DIVISION OF PROBATION AND PLACEMENT**

This division will supervise persons released from institutions and other units operated by the Authority. It will continue to give counsel and advisory service to probation departments and county officials throughout the state. It will also continue to gather information relative to probation, parole and placement matters.

**(e) DIVISION OF RESEARCH AND STATISTICS**

Little has been done to develop accurate statistics in the field of juvenile delinquency. The Youth Authority will establish a Division of Research and Statistics in an effort to get a statewide picture of this problem. Accurate figures, intelligently and objectively interpreted, will be of tremendous value in ascertaining the extent and nature of the delinquency in the various communities of the state. Such figures can and should serve as a guide in prevention work, indicating the areas of greatest need.

On June 16 the Youth Authority opened its first forestry camp at Calaveras Big Trees State Park. A number of boys are engaged in clearing the ground and in erecting buildings which were obtained from the California State Guard. The camp will be operated cooperatively with the State Division of Parks. It will accommodate 100 boys from 16 to 22 years old, and will be completed by October. During the construction period between 40 and 50 boys will be received. A varied work program of park maintenance, water development, trail clearing, reforestation, etc., will be supervised by the Division of Parks. The educational program will be developed by the State Department of Education. Careful attention is being given to the religious, recreational and counseling services which must be provided if the camp is to be worth while.

The Authority has completed plans for a 24-hour farm type school for girls. The Authority had the advice of a representative statewide committee of women skilled in solving problems of delinquent girls. With their advice, and with the help of Mrs. Nan Allen, Superintendent of the Ventura School for Girls, arrangements were made to take over the buildings and farm belonging to the Knights of Pythias, located near Santa Rosa. The lease was signed on the second of July, and funds to operate this unit were allocated by the Governor.

We will be able to accommodate between 90 and 100 girls and expect to receive first commitments about September 15. Courts and probation departments will be notified of the exact date as soon as final arrangements have been completed.

The Authority has looked at many sites in its effort to establish a 24-hour farm school for younger boys. To date no site has been offered which is satisfactory. The Authority is anxious to obtain a site in the northern part of the state where an educational and work project type of program can be developed. In this school for younger boys the emphasis must be on education. We hope to locate it on land which can be cultivated and where the boys can engage in a variety of farm projects. We will have the help of the State Department of Education in developing an adequate vocational school.

**PRIMARY FUNCTIONS**

As reorganized, the Youth Authority has two primary functions. The first, and most important, is in the field of delinquency prevention. The second is to establish proper facilities for the care and rehabilitation of offenders under 23 years of age. In carrying out this second function, the Youth Authority becomes in reality a state department of corrections for youthful delinquents. It retains, however, the basic principles of the Youth Authority Act; namely, the mandatory legal provision to study each person committed before that person be placed under any type of treatment program; the necessity to periodically re-study the individual to see whether or not the program prescribed is proving beneficial or whether some other program is needed; the centralization of authority so that one agency retains control from the time the courts commit until the time the person is discharged from supervision; the power to change the treatment program whenever the need for such change is indicated; the power to use other agencies, both public and private, for specialized treatment or for research in the field of delinquency; the power to aid in the development of a statewide prevention program.

The Senate and Assembly interim committees have given a mandate to the Youth Authority to inaugurate vigorously a statewide delinquency prevention program; to establish immediately, forestry camps for boys; to establish needed facilities for girls, and to improve release and placement procedures. All committees have admonished the Authority to begin in a modest manner and to assume increased responsibilities only when it was in a position to do so efficiently.

The Authority knows the urgent necessity to give courts and communities relief. Every effort is being made to develop facilities as quickly as desirable sites, necessary materials and competent personnel can be secured.

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Most of the crimes which disturb the internal peace of Society are produced by the restraints which the necessary, but unequal, laws of property have imposed on the appetites of mankind, by confining to a few the possession of those objects that are coveted of many.—*Gibbon.*

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## THE JOB AHEAD: FINANCING THE WAR*

THE TREASURY has raised its sights considerably on War Bonds for the rest of the year. During the first half of this year we sold approximately $7 billion in War Bonds to individuals. During the second half we propose to sell $18 billion—or more than twice as much. To some people the task seems impossible. They say we're shooting for the moon. Let's see.

There is no mystery as to the sources from which these funds might be obtained. Production in general—and *war* production in particular—is creating the very funds we want to tap. War production is not only turning out the planes, tanks, and ships that will crush the enemy; it is also generating at the very same moment incomes equal in amount to that production. What the people of the nation receive in the way of incomes is simply the equivalent of what they produce in the way of goods and services. If the Government, therefore, is spending more than it is receiving in taxes, and is thus faced with a deficit, the people of the country are receiving more than they are spending, and are thus possessed of a surplus. *It is precisely this surplus (or savings) that the Government is in search of.*

It is important to bear in mind here that this increase in surplus (or savings) represents a national total that will be distributed among individuals in varying amounts. Some individuals—those living on fixed incomes, pensions, annuities and so on—may find it impossible to increase their savings appreciably. Other individuals, however, with larger than usual wages—a large proportion of our people—are saving far in excess of the national average. *It is the great merit of the voluntary savings program that it can separate the wheat from the chaff and provide the mechanism for mobilizing wartime savings.*

In the fiscal year 1944 approximately one-half of the Gross National Product—that is, the value of all the goods produced and of all the services rendered by the whole nation in a year—will be bought by the Government for war activities, and approximately half will go for everything else. Under existing tax legislation, however, only slightly more than one-third of Government expenditures will be covered by taxes, the remaining two-thirds by borrowing. The deficit will be something like $70 billion—and this deficit in turn *will necessarily be matched by corporate and individual surplus (or savings) of an approximately equal amount.* Only minor adjustments keep the two figures from being identical.

The fundamental task of war finance is to transfer this excess income from private to public use; to draw back into the Treasury out of the incomes created by our ever-expending national production an amount equal to what the Government is spending. This can best be done by increasing taxes and by increasing the sale of War Bonds. *Unless these measures are employed, either alone or in combination, excess funds now accumulating are likely to lead to an inflationary price rise, for the supply of goods and services is severely limited, and cannot be increased.*

Our task in fiscal 1944 is to make our production and financial gears mesh. To accomplish this we must raise our sights even further on taxes and War Bonds. Only by so doing can we remove inflationary pressures at their source and preserve a reasonable measure of economic stability.

The war is the principal activity in the economic life of our nation today—it is *your* war and *my* war—it must be *your* job and *my* job from now on to make financing the war our foremost war activity, as it is the most important thing we can do on the home front.

*Reprinted in part from Treasury War Finance Bulletin dated July 1, 1943, at the request of the Treasury Department War Finance Committee for Southern California.

## COLLUSIVE ACTIONS

WHERE a real controversy exists between the parties to a law suit, the mere fact that the action suit thereon "may be an amicable one raises no presumption in its disfavor." *Payette-Boise Water Users Assn. v. Fairchild*, 35 Idaho 97, 205 Pac. 258. But when a case ceases to be amicable and becomes collusive, beware!

Such is the effect of the decision of the Supreme Court of the United States in the recent case of *United States v. Johnson*, 87 L. Ed. Adv. Ops. 1027. In that case, which involved the Constitutionality of the Emergency Price Control Act, it appeared without contradiction from an affidavit of the plaintiff submitted by the Government as intervener on a motion to dismiss the action as collusive, "that he brought the present proceeding in a fictitious name; that it was instituted as a 'friendly suit' at appellee's request; that the plaintiff did not employ, pay, or even meet, the attorney who appeared of record in his behalf; that he had no knowledge who paid the $15.00 filing fee in the district court, but was assured by appellee that as plaintiff he would incur no expense in bringing the suit; that he did not read the complaint which was filed in his name as plaintiff; that in his conferences with the appellee and appellee's attorney of record, nothing was said concerning treble damages and he had no knowledge of the amount of judgment prayed until he read of it in a local newspaper." Vacating the judgment below with instructions to the District Court to dismiss the suit as collusive, the Supreme Court said:

> "Even in a litigation where only private rights are involved, the judgment will not be allowed to stand where one of the parties has

dominated the conduct of the suit by payment of the fees of both. *Gardner v. Goodyear Dental Vulcanite Co.*, 131 U. S. ciii, Appx., and 21 L. Ed. 141.

"Here an important public interest is at stake—the validity of an Act of Congress having far-reaching effects on the public welfare in one of the most critical periods in the history of the country. That interest has been adjudicated in a proceeding in which the plaintiff has had no active participation, over which he has exercised no control, and the expense of which he has not borne. He has been only nominally represented by counsel who was selected by appellee's counsel and whom he has never seen. Such a suit is collusive because it is not in any real sense adversary. It does not assume the honest and actual antagonistic assertion of rights to be adjudicated—a safeguard essential to the integrity of the judicial process, and one which we have held to be indispensable to adjudication of constitutional questions by this Court. *Chicago & G. T. R. Co. v. Wellman*, 143 U. S. 339, 345, 36 L. Ed. 176, 179, 12 S. Ct. 400; and see *Lord v. Veazie*, 8 How. (U. S.) 251, 12 L. Ed. 1067; *Cleveland v. Chamberlain*, 1 Black (U. S.) 419, 17 L. Ed. 93; *Bartemeyer v. Iowa*, 18 Wall. (U. S.) 129, 134, 135, 21 L. Ed. 929, 931; *Atherton Mills v. Johnston*, 259 U. S. 13, 15, 66, L. Ed. 814, 815, 42 S. Ct. 422. Whenever in the course of litigation such a defect in the proceedings is brought to the court's attention, it may set aside any adjudication thus procured and dismiss the cause without entering judgment on the merits. It is the court's duty to do so where, as here, the public interest has been placed at hazard by the amenities of parties to a suit conducted under the domination of only one of them. The District Court should have granted the Government's motion to dismiss the suit as collusive."

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**Ten per cent of your income in War Bonds will help to build the planes and tanks that will insure defeat of Hitler and his Axis partners.**

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**Wasted money is wasted lives. Don't waste precious lives. Every dollar you can spare should be used to buy War Bonds. Buy your ten per cent every pay day.**

## LET'S HAVE YOUR BOLO KNIFE!

FOUR THOUSAND FILIPINOS, enlisted in the United States Army, are being trained in Southern California for jungle warfare. Although well equipped with all modern implements of warfare, they lack one essential offensive and defensive weapon, in the wielding of which the Filipino is very adept—the *Bolo Knife*.

The bolo knife is not standard army equipment and thorough investigation reveals that the government cannot supply special weapons to an individual regiment. Therefore, a group of Southern Californians have formed a committee to raise funds to equip these Filipino soldiers with bolo knives.

The commanding officer of the regiment, in advising the committee that he had official permission to accept the gift of these bolos from the citizens of Southern California, said:

> "There is no inadequacy in our equipment. That is not the reason we want the bolos. But, they are a weapon that the Filipino is accustomed to and is expert with and I think feels possibly a little surer with than some other weapons. Other troops I do not think would need a bolo, but the Filipino soldier could do some wonderful things with it. Send him out with a bolo and a few hand grenades and with his natural courage he can accomplish anything. When they heard that they might get these bolos the Filipino soldiers became all worked up and excited about it."

Four thousand bolo knives, at a cost of $5.00 each, are being manufactured according to specifications of Army officials well versed in their use. The Filipino Bolo Knife Committee must raise $20,000.00 to pay for these bolos.

Every $5.00 contributed buys a bolo. Every bolo goes into the hands of a Filipino soldier. Every soldier thus equipped with this weapon, which strikes fear into the heart of the Japs, is a personal representative of those who cannot do the job themselves.

How many Filipino soldiers will you equip with a bolo knife, at $5.00 each? Checks should be made payable to the Filipino Bolo Knife Fund and sent in care of the Los Angeles Chamber of Commerce.

FILIPINO BOLO KNIFE FUND,
ALBERT REBEL, *Chairman*.

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From a recent Law School exam:

"Courts have as their purpose the execution of justice and to that end the attorney is an officer of the court."

High Executioner?

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**HAVE YOU BOUGHT YOURS?**

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